

**SETTLEMENT AGREEMENT**  
**BETWEEN**  
**STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS**  
**AND**  
**EDDIE SWARNES**

Eddie Swarnes (Swarnes) and the State Board of Embalmers and Funeral Directors (Board) enter into this Settlement Agreement for the purpose of resolving the question of whether Swarnes' license as a funeral director, license no. 006143, will be subject to discipline. Pursuant to § 536.060, RSMo,<sup>1</sup> the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo. The Board and Swarnes jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo.

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Swarnes acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against him at the hearing; the right to present evidence on his behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against him; the right to a ruling on questions of law by the Administrative Hearing Commission; the right

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<sup>1</sup> All statutory citations are to the 2000 Revised Statutes of Missouri, as amended, unless otherwise noted.

to a disciplinary hearing before the Board at which time Swarnes may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the Board.

Being aware of these rights provided to him by law, Swarnes knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to him.

Swarnes acknowledges that he has received a copy of the documents relied upon by the Board in determining there was cause for discipline, along with citations to law and/or regulations the Board believes were violated. Swarnes stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Swarnes' license as a funeral director, license no. 006143, is subject to disciplinary action by the Board in accordance with the relevant provisions of Chapters 333, 436 and 621, RSMo. The parties stipulate and agree that the disciplinary order agreed to by the Board and Swarnes in Part II herein is based only on the agreement set out in Part I herein. Swarnes understands that the Board may take further disciplinary action against him based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.

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**I.**  
**Joint Stipulation of Facts and Conclusions of Law**

Based upon the foregoing, the Board and Swarnes herein jointly stipulate to the following:

1. The Board is an agency of the State of Missouri, established and existing pursuant to Section 333.151, RSMo, for the purpose of administering and enforcing Chapter 333 and portions of Chapter 436, RSMo, and the regulations adopted thereunder.
2. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to §§ 333.121.2 and 621.045, RSMo.
3. Swarnes is a natural person who holds funeral director license number 006143 issued by the Board. Such license is, and was at all times relevant herein, active and valid.
4. On May 22, 2006, the Circuit Court of St. Louis County entered “Judgment, Order for Consent Judgment, and Permanent Injunction of Eddie J. Swarnes and Swarnes Funeral Services, LLC” in the case of *State of Missouri v. Eddie J. Swarnes, et al*,<sup>2</sup> Case number 05CC-003584 (the “Injunction Case”).
5. In the Injunction Case, Swarnes stipulated to and the Court so ordered, that Swarnes violated provisions of Chapter 436, RSMo.
6. Swarnes stipulated that he failed to properly trust monies entrusted to him

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<sup>2</sup> Swarnes Funeral Services, LLC was the other Defendant in the Injunction Case, however that funeral establishment is no longer in operation so no discipline is sought against that entity.

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as payment for pre-paid funeral plans and that this conduct violated the provisions of Chapter 436, RSMo.

7. This conduct of Swarnes provides cause to discipline his funeral director's license pursuant to Sections 333.121.2(4), (5), (13), and (15), RSMo, which provide:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

\* \* \*

(13) Violation of any professional trust or confidence;

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(15) Violation of any of the provisions of chapter 193, RSMo, chapter 194, RSMo, or chapter 436, RSMo [.]

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## II.

### **Joint Agreed Disciplinary Order**

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of §§ 536.060, 621.045.3, and 621.110, RSMo.

1. **Swarnes' funeral director license is placed on probation.** Swarnes' license as a funeral director is hereby placed on PROBATION for a period of FIVE YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Swarnes shall be entitled to practice as a funeral director under Chapters 333 and 436, RSMo, provided Swarnes adheres to all the terms of this agreement.

2. **Terms and conditions of the disciplinary period.** The terms and conditions of the disciplinary period are as follows:

A. Swarnes shall keep the Board apprised at all times of his current address and telephone number at each place of residence and business. Swarnes shall notify the Board in writing within ten days of any change in this information.

B. Swarnes shall timely renew his funeral director license, timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain his license in a current and active status.

C. Swarnes shall meet in person with the Board or its representative at any such time or place as required by the Board or its designee upon notification from the Board or its designee. Said meetings will be at the Board's discretion and may occur periodically during the probation period.

D. Swarnes shall submit written reports to the Board no later than January 1 and July 1 of the disciplinary period, stating truthfully whether there has been compliance with all of the requirements of this settlement agreement. It is

Swarnes' responsibility to ensure that the reports are submitted by the dates set forth above. The first such report is due by January 1, 2008.

E. During the probationary period, Swarnes shall accept and comply with unannounced visits from the Board's representative to monitor compliance with the terms and conditions of this settlement agreement.

F. If at any time during the disciplinary period, Swarnes changes his residence from the State of Missouri, ceases to be currently licensed in Missouri under Chapter 209, RSMo, as amended, fails to timely pay all fees required for license renewal, or fails to keep the Board advised of all current places of residence and business, the time of absence, unlicensed status, delinquency in paying fees for license renewal or unknown whereabouts shall not be deemed or taken as any part of the disciplinary period.

G. Swarnes shall comply with all relevant provisions of Chapters 333 and 436, RSMo, as amended, all rules and regulations duly promulgated thereunder, all local, state, and federal laws. "State" as used herein includes the State of Missouri and all other states and territories of the United States.

3. Upon the expiration of the disciplinary period, the funeral director license of Swarnes shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the Board determines that Swarnes has violated any term or condition of this Settlement Agreement, the Board may, in its discretion, after an

evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Swarnes' funeral director license.

4. No additional discipline shall be imposed by the Board pursuant to the preceding paragraph of this Settlement Agreement without notice and opportunity for hearing before the Board as a contested case in accordance with the provisions of Chapter 536, RSMo.

5. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any future violations by Swarnes of §§ 209.319 through 209.339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

6. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the Board or may be discovered.

7. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the parties agree that the Board may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Swarnes agrees and stipulates that the Board has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

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8. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

9. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

10. The parties to this Settlement Agreement understand that the Board will maintain this Settlement Agreement as an open record of the Board as required by Chapters 333, 436, 610, and 620, RSMo, as amended.

11. Swarnes, together with his partners, shareholders, officers, directors, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the Board, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to §536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the

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Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

13. Swarnes understands that he may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Swarnes' funeral director license. If Swarnes desires the Administrative Hearing Commission to review this Settlement Agreement, Swarnes may submit his request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

If Swarnes requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Swarnes' funeral director license. If Swarnes does not request review by the Administrative Hearing Commission, the Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the Board.

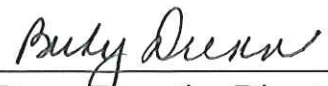
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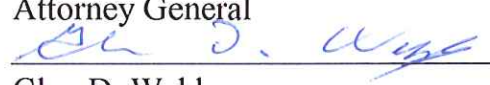
  
Eddie Swarnes

Date

State Board of Embalmers and Funeral  
Directors

  
Becky Dunn, Executive Director  
Date: 9/17/07

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